lity of the witnesses. It has not been shown to us that the finding is perverse or totally inconsistent with the surrounding circumstances.

The finding of the knife concealed on the person of the appellant at the police station is conclusive evidence that at the time he was apprehended in the coffee shop, he was in possession of the knife. In other words, at the time of his arrest the appellant was actually in possession of an offensive weapon in contravention of section 6 of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, which is a seizable offence. In the circumstances, the question of whether the respondent had reasonable grounds for believing that evidence of the commission of an offence under section 6 was likely to be found on the appellant in order to conduct a search under section 8(1) of the said Ordinance is purely academic, and immaterial for the purpose of deciding whether the detention in order to effect the search amounted to false imprisonment or not.

In regard to the claim for damages in respect of assault, again the evidence relate to two incidents — one in the coffee shop and the other in the police station. In regard to the alleged assault in the police station, the learned trial judge had discredited the evidence of the appellant and for reasons already stated we are not disposed to interfere with that finding of fact. As for the assault in the coffee shop, the allegation by the appellant is that he was forcibly dragged by the respondent to the police station without giving any reasons for the arrest.

In *Christie* v. *Leachinsky*,[1] it was held that a person arrested on suspicion of committing an offence, is entitled to know forthwith the reason for his arrest and that if the reason was withheld, the arrest and detention would amount to false imprisonment, until the time he was told the reason. It would follow therefore from this proposition, that a person arrested without being told the reason is entitled to resist the arrest and any force used to overcome the resistence would amount to assault. In the instant case there is a conflict of evidence as to whether the appellant was told the reason for his arrest. The learned trial judge however did consider this point and his conclusion is stated in his judgment as follows: "I have also considered plaintiff's evidence in this respect and the events just before and subsequent to his being led to the police station, as against the evidence adduced by the defendant and his witnesses, and cannot avoid coming to the conclusion that the plaintiff's great reluctance to go to the police station with the defendant stemmed from the fear of what defendant had told him in the coffee shop regarding what he, the defendant, suspected the plaintiff of carrying, and not to a consciousness of his innocence."

We see no reason to disagree with this finding of fact by the learned trial judge, and the appeal is therefore dismissed with costs.

Azmi C.J. (Malaya) and **Ismail Khan J.** concurred.

Appeal dismissed.

Solicitors: *Wan Mustapha & Co.*

ANG CHAING LOCK v. PUBLIC PROSECUTOR

[Ā.Cr.J. (Ong Hock Sim J.) December 14, 1967]

[Penang — Criminal Appeal No. 51 of 1967]

Penal Code, s. 193 — Contradictory statements made in course of police investigation and at trial — Accused corrects his previous statement after caution — Charge for giving false evidence — Contradiction must be clear and unambiguous to form the basis of charge.

Criminal Law and Procedure — Charge — Giving false evidence — Trial record — Production of certified copy of record as part of evidence.

In the trial of a case of theft the appellant gave such evidence for the prosecution which resulted in the accused being acquitted.

The evidence that he gave was alleged to be false in that it differed from what he had stated to the police officer who investigated that theft. This led to his being charged and tried in the sessions court, Penang for giving false evidence. He was convicted and sentenced to six months imprisonment. The whole of the trial record wherein the false evidence was alleged to have been given was produced in toto as part of the case against the appellant.

The charge as drafted did not clarify to the accused the falsity of the evidence alleged and which he had to meet.

Held: (1) it is wrong in a charge of giving false evidence to attach the whole trial record wherein the false evidence was alleged to have been given. It is sufficient to have an officer of the court produce a duly certified copy of the part of the evidence given by the appellant which formed the basis of the charge;

(2) while giving false evidence is at any time a serious offence, it is incumbent on the trial president not to allow himself to be swayed thereby but to scrutinise the charge and the evidence with great care as upon a conviction for such offence the punishment under section 193 of the Penal Code is imprisonment for a term which may extend to seven years and also liability to a fine;

(3) there was no material discrepency or contradiction between the statement and the evidence given by him in court which formed the basis of the charge nor were certain conclusions arrived at by the president maintainable.

Case referred to:—

(1) *Haji Yusof bin Keromo* v. *Public Prosecutor* [1952] M.L.J. 242.

CRIMINAL APPEAL.

David Choong for the appellant.

Haji Suhaimi bin Dato Haji Kamaruddin (Deputy Public Prosecutor) for the respondent.

Ong Hock Sim J.: The appellant had been convicted in the sessions court, Penang on an amended charge as follows:—

"That you on the 3rd day of March 1966, at about 2.50 p.m. at Central Police Station, in the District of Georgetown, in the State of Penang, gave a statement to woman inspector Koraiza binti Abdullah, in the course of a police investigation into the case of Tan Eng Kiat alias Ah Kiat, charged under section 380 of the Penal Code, to wit, 'I saw him come out of the shop and took with him a scooter tyre and rode off with a man on a scooter,' and on the 23rd day of August, 1966, at the Penang Sessions Court, in the District of Georgetown, in the State of Penang, in the course of a trial of Tan Eng Kiat alias Ah Kiat, charged under section 380 of the Penal Code, before the President of Penang Sessions Court, stated in evidence, 'I saw the accused leaving the shop; I saw him carrying one article; I can't say what it was; I can't say how he carried this article; he left the shop alone; he left on a motor bike; I can't remember whether he left alone or not,' one of which statements you either knew or believed to be false, or did not believe to be true, and that you have thereby committed an offence punishable under section 193 of the Penal Code."

and was convicted on the 19th September, 1967 and sentenced to six months' imprisonment.

The appellant was arrested on the 17th May, 1967 for having allegedly given false evidence in connection with a case of theft of a motor-cycle tyre with rim valued at about $37 under section 380 Penal Code which resulted in the accused therein being acquitted on the 23rd August, 1966 without his defence being called. This of course was very different to what was stated by the learned president who convicted him in his grounds of judgment: "It would seem he was the star witness for the prosecution and the prosecution as a consequence of his evidence had to withdraw its case against Tan Eng Kiat who was charged with theft in a dwelling house". While I have no doubt that giving false evidence is at any time a serious offence, it is incumbent on the trial president not to allow himself to be swayed thereby but to scrutinise the charge and the evidence with greater care as upon a conviction for such offence the punishment under section 193 of the Penal Code is imprisonment for a term which may extend to seven years and also liability to a fine. Clearly in saying that the prosecution had to withdraw its case, the learned president had erred and might have thereby allowed himself to be somewhat unfavourably disposed to the appellant. The appellant was not "the star witness" as stated by the learned president in the sense of being the only witness upon whose testimony the whole prosecution case must stand or fall, as the record of the case (I shall have something to say about its being produced in toto as part of the case against the appellant) disclosed that appellant's friend whose name he had given to the investigation officer who recorded his statement and who was called as a witness against Tan Eng Kiat (P.W.4) gave evidence as follows: "I know the accused (Tan Eng Kiat) by sight . . . . I was talking with P.W.2 (the appellant). While I was there I saw him leaving the shop. I saw him carrying a tyre when he left the shop." That evidence was not shaken in cross-examination and it was my view that the trial president erred in not calling upon the defence. Instead of appealing against the acquittal it was decided to proceed against the appellant.

I have stated that in my view it was also wrong in a charge of giving false evidence to attach the whole trial record wherein the false evidence was alleged to have been given. It is sufficient to have an officer of the court produce a duly certified copy of that part of the evidence given by the appellant which is the basis of the charge.

Upon the charge as drafted, it is not a little astonishing that there was no objection by appellant's counsel. A perusal of the grounds of judgment at once shows that the learned president had not considered himself in any way restricted to the matters specified in the charge. He says: "The chief prosecution witness was inspector Koraiza. After hearing her and after reading (a) the statement given by accused to her and recorded by her personally on the 3rd of March, 1966 and (b) the certified true copy of the evidence recorded by the sessions court president on the 23rd of August, 1966, with special attention to the evidence of accused taken down by the learned president I held that the prosecution had presented a *prima facie* case against accused on the amended charge as there were substantial differences in the statement of accused and the evidence recorded by the said president of the sessions court as reproduced in the charge respectively." Yet at the end of it all, he says: "The accused has not given any reason at all why before the president, sessions court, on the 23rd of August, 1966 he could not say what it was that the accused in that case carried out of the shop. It was very plain from the notes of the accused's recorded by the former president that accused was given a lot of chances to refresh his memory and was asked to speak the truth by the prosecuting officer at that court who happened to be the same prosecuting officer in my court in this case. It would appear he was not willing to tell the court what the 'article' was that the accused came out of the shop with on that day, whereas in his statement to the woman inspector and in his evidence before me on the 19th September, 1967 he stated accused in that case came out of the shop with a tyre. By stating that it was just an article accused knew his statement was false." I have underlined that last sentence to show that the finding of "substantial differences" is now confined to a reluctance to call the "article" by its proper name, namely a "tyre". What is the evidence of the appellant at the trial of Tan Eng Kiat? After being impeached and treated as a hostile

witness — which is the object of section 124 of the Criminal Procedure Code — the record showed a material part was underlined for that court president but we are all in the dark what it was — the accused did not recant upon his statement and said: "I agree I made a statement to a police officer. I did not mention 'scooter tyre'. I only mentioned 'tyre'. I now say I saw him carrying something which looks like a tyre." If this was stated in evidence, how then could the learned president make the statement I have underlined earlier? How is the appellant to know what case to meet upon the charge as drafted? In regard to his evidence at the trial, a number of statements had now been linked together and set out as contradicting his statement to the investigation officer. I am unable to distinguish and sort out the offending contradiction. I am unable to understand the basis for this charge as there has been no material contradiction in his evidence at the trial and his statement in the course of investigation particularly as he had corrected himself after being impeached. It would be directly contrary if he were to say at the trial "The accused did not carry anything out of the shop that night" or "It was not the accused but some other person whom I cannot recognise who took a tyre from the shop". I would like to quote a passage from the judgment of Buhagiar J. in *Haji Yusof bin Keromo* v. *Public Prosecutor* [1] (at p. 243) where he says:—

"Where a witness after having made a false statement, is cautioned by the trial judge and is informed of various circumstances which seem to establish the falsehood of that statement, and the witness after such caution acknowledges that his earlier statement was false and corrects it, it is not desirable to subject such witness to a prosecution for perjury."

Here short of identifying the article as a tyre to start with, I think his later statement that it looked like a tyre should have made it clear that a prosecution for false evidence is not maintainable. I find nothing on record for the view the learned president took "that accused was given a lot of chances to refresh his memory" or that he "was asked to speak the truth by the prosecuting officer".

It is clear that the learned president had taken extraneous matters into consideration and had failed to confine the issues to the charge preferred against the accused. I am unable to find any material discrepancy which had affected the result of the trial of Tan Eng Kiat which alone would, in my view, justify a prosecution of the appellant.

I accordingly quash the conviction and the sentence.

I would add that under section 123(4) of the Criminal Procedure Code (Cap. 21) "a police officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3)". This has not been done but in view of the decision I have come to on other grounds, I do not say whether such omission is fatal to a prosecution in respect of a statement purported to be recorded under the section.

Appeal allowed.

Conviction and sentence quashed.

Solicitors: *Lim, Lim & Oon.*

RAMLY & ORS. v. JAFFAR

[F.C. (Azmi C.J. (Malaya) Ismail Khan and MacIntyre JJ.) December 15, 1967]

[Kuala Trengganu — Federal Court Civil Appeal No. X. 82 of 1966]

Tort — Wrongful arrest — Claim for damages for wrongful arrest — Reasonable and probable cause — Test to be applied — Criminal Procedure Code (Cap. 6), s. 23 (i)(a).

The appellants appealed against the decision of the High Court which had awarded damages for wrongful arrest. The respondent had been arrested on a statement by one Zakaria and the learned judge had held that the statement made by Zakaria to the police was neither a credible information nor did it give rise to a reasonable suspicion as against the respondent within the meaning of section 23(i)(a) of the Criminal Procedure Code.

Held: the question whether there was a reasonable and probable cause must be determined objectively on the evidence before the court and in this case there was reasonable suspicion that the respondent was concerned in a seizable offence and therefore the arrest was not wrongful and the appeal must be allowed.

Case referred to:—

(1) *Tims* v. *John Lewis & Co.* [1951] 2 K.B. 472.

FEDERAL COURT.

Au Ah Wah for the appellants.

Ong Seng See and *Wong Kim Fatt* for the respondent.

Azmi C.J. (Malaya): This is an appeal by two police constables, hereinafter referred to by their names Ramly and Zain and their employer the Government of Malaysia, against an award of damages for the wrongful arrest of the respondent.

The claim was originally for wrongful arrest against Ramly and for procuring or assisting in the wrongful detention of the respondent against Zain and another police constable Latiff, and against all three for assault. The learned judge dismissed both claims against Latiff and the claim for assault against all three.

The claim for assault was dismissed by the judge in the following terms:—

"In the light of the medical evidence I had no difficulty in deciding that he (i.e. respondent) had not dis-